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SUBJECT: ANALYSIS OF RISK OF TORTURE OF BWINDI DEFENDANTS

REF: KIGALI 599

Classified By: Ambassador Michael R. Arietti, reason 1.4 (B/D)

¶1. (C) Summary. Post submits this analysis of the risk of torture of the three Bwindi defendants if returned to Rwanda for trial, for use in Department deliberations. Post finds that it is not/not "more likely than not" that these three individuals would be subject to torture if so returned. Recent legislation puts formal legislative guarantees in place for individuals returned from other countries for trial (Organic Law Concerning Transfer of Cases to the Republic of Rwanda from the International Criminal Tribunal for Rwanda and from Other States), laying out extensive due process protections, and inspection of detention facilities. The Minister of Justice has personally committed the GOR to the provision of additional assurances, if required, as to proper treatment of the detainees. Given the great interest the GOR has in securing the return of ICTR detainees for trial, and encouraging other states to return Rwandan suspects for trial (including Great Britain, embarked upon extradition proceedings regarding several individuals sought for trial by the GOR), the government would in fact be on its very best behavior in regard to the Bwindi defendants. End summary.

¶2. (C) At Department's request, Post submits this analysis of potential claims by Bwindi defendants that they would be "more likely than not" the subject of torture if returned for trial in Rwanda. We find it unlikely that the defendants would face any physical abuse while in detention. First and foremost, Rwanda's actions in this case will not occur in a legal or political vacuum: Rwanda is embarked upon a vigorous campaign to solicit the return of genocide suspects from other nations, and to encourage and assist other nations in prosecuting suspected genocidaires. Aside from close cooperation with our own Department of Justice Office of Special Investigations, we are aware of cooperative efforts with the governments of Finland, Great Britain, Canada, New Zealand, Belgium, and, most recently, the French Government. The cornerstone of Rwanda's efforts to either secure custody of, or see the punishment of, senior participants in the 1994 genocide is the joint effort by the ICTR and the Rwandan government to effect the transfer of a number of cases pending before the Arusha tribunal to Rwandan judicial authorities.

¶3. (C) The importance to the Rwandan government of these many efforts cannot be over-emphasized: securing the return of some of the masterminds of the genocide is one of Rwanda's highest foreign policy goals. The Bwindi defendants would return to a Rwanda energized by its international efforts, and very conscious of its international responsibilities, regarding high-profile criminal suspects. We find it very unlikely that Rwanda would put at risk ICTR transfers, or transfers from other nations (several of whom must make their own assessment of the treatment suspects would receive in Rwanda) by subjecting the Bwindi defendants to anything other than a strict adherence to governing international standards.

¶4. (C) Rwanda has also bound itself by law to do just that: observe international standards to the letter in cases transferred from other jurisdictions. On March 19, 2007 Rwanda gazetted the Organic Law Concerning Transfer of Cases to the Republic of Rwanda from the International Criminal Tribunal for Rwanda and from Other States. This law is explicitly made applicable to transfers from other states, with no limitation as to types of cases (art. 24). The statute provides extensive due process protections for defendants, including right to a presumption of innocence, right of adequate time to prepare a defense, right to counsel at state expense, and the right to secure attendance of witnesses (art. 14) (note: many of these rights are protected under the Rwandan Constitution as well).

¶5. (C) The statute also provides extensive protection of and assistance for witnesses, and establishes a monitoring regime for trial proceedings and detention facilities. For example, the ICRC is explicitly granted the authority to supervise detentions. (Post has regular consultations with the local ICRC office, and we find their monitoring of detention facilities to be extensive and comprehensive). Finally, the statute provides for "appropriate security and protection" measures for defense counsel. Cases coming under this statute are tried in Rwandan High Courts, the highest level of trial court in the country, and defendants are accorded an automatic right of appeal to the Rwandan Supreme Court.

¶6. (C) Minister of Justice Tharcisse Karugarama has told us, upon his review of the Bwindi case file, that Rwanda would prosecute the defendants should they return to Rwanda. He noted that the confessions obtained from the defendants would likely be subject to challenge by defense counsel, and the court would make an independent determination of their validity. To secure the return of the Bwindi defendants, the Minister said the GOR would be willing to give appropriate written assurances to the USG concerning treatment of the defendants.

¶7. (C) Post has also consulted with the president of FACTS-Rwanda (Forum for Activists Against Torture) which has conducted extensive examinations of the conditions in Rwandan detention facilities -- which it broadly interprets to include police stations, pretrial centers, remand prisons, juvenile centers, immigration centers, psychiatric institutions, administrative detention centers, and regular prisons. He identified the major problems as acutely crowded conditions, and related health concerns. While noting that incidents or abuse and torture do occur, such instances are "slim," are "rare," and the majority of police and prison officials are acting properly. In addition to monitoring efforts, FACTS-Rwanda has conducted many training programs for the Rwandan National Police; indeed, the FACTS president told us that "every police commander in the Northern and Southern Provinces (half the country) knows me." While he said that "some police officers still use primitive methods of interrogation," he has found police commanders and individual officers receptive to his training regimes and his message of proper and lawful conduct toward detainees, and "things are better." FACTS has also conducted "train-the-trainer" programs in 13 of Rwanda's 16 prisons on preventing torture and violence.

¶8. (C) In a copy of a lengthy report he gave to the mission, "Human Rights Monitoring in Rwandan Prisons," the general conclusion states in part, that "there are still evident violations of people's rights" in detention facilities. However, "it should be widely acknowledged that torture and ill-treatment is not an institutionalized issue; individuals commit the incidents noticed." We take from our meeting with FACTS-Rwanda and from his report that torture is not the norm in Rwandan detention facilities.

¶9. (C) Comment. As noted above, should the Bwindi defendants be returned to Rwanda, their prosecution would not occur in a legal or political vacuum. The GOR is acutely aware of the necessity to demonstrate to the international

community its adherence to due process standards to regard to defendants transferred from other jurisdictions. The Bwindi defendants would benefit from these concerns as a matter of high national policy. Given enlightened prison and police authorities (note, for example, high praise for prison officials by the ICRC in reftel), we find the likelihood of any physical abuse to be remote. End comment.

ARIETTI